

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

HARRISON MULFORD III, RHONDA NEWBY,
CORY FOX, and RICHARD DeLUNA, on behalf
of themselves and all others similarly situated,

Plaintiffs,

v.

No. CIV 05-659 MV/RHS

ALTRIA GROUP, INC., and
PHILIP MORRIS, USA, INC.,

Defendants.

MEMORANDUM OPINION AND ORDER

THIS MATTER comes before the Court on Plaintiffs' Unopposed Motion to Exceed Page Limit for Exhibits Pursuant to LR-Civ. 10.5 (Doc. No. 89, filed June 4, 2007) and on Plaintiffs' Renewed Motion for Class Certification Pursuant to Fed. R. Civ. P. 23(c)(1)(C) (Doc. No. 90, filed June 5, 2007). For the reasons stated below, the Court will **DENY** Plaintiffs' Unopposed Motion to Exceed Page Limit for Exhibits as moot, **DENY** Plaintiffs' Renewed Motion for Class Certification without prejudice, and **GRANT** Plaintiffs leave to file a revised Motion for Class Certification.

Plaintiffs' Renewed Motion for Class Certification.

Plaintiffs filed their Renewed Motion for Class Certification on June 4, 2007. Philip Morris later filed an unopposed motion for stay of proceedings (Doc. No. 107, filed January 23, 2008) pending the United States Supreme Court's decision in *Altria Group Inc. and Philip Morris USA, Inc., v. Good* ("Good"). (Doc. No. 107 at 1). The Court stayed all proceedings in this matter and instructed counsel to inform the Court upon entry of the Supreme Court's decision. (Doc. No. 108,

filed January 28, 2008). Counsel notified the Court on January 28, 2009 of the Supreme Court's decision. (Letter from Andrew G. Schultz, counsel for Philip Morris, to the Honorable Martha Vázquez, January 27, 2009).

Counsel for Plaintiffs and Philip Morris have since contacted the Court regarding supplemental authorities which were decided after the completion of briefing for Plaintiffs' Renewed Motion for Class Certification more than 18 months ago. (Letter from Andrew G. Schultz, counsel for Philip Morris, to the Honorable Martha Vázquez, January 29, 2009; Letter from Andrew G. Schultz, counsel for Philip Morris, to the Honorable Martha Vázquez, January 30, 2009; Letter from Gerard Mantese, counsel for Plaintiffs, to the Honorable Martha Vázquez, February 10, 2009). Those letters provide very little argument regarding the applicability of the supplemental authorities to Plaintiffs' Renewed Motion for Class Certification.

While the Court is interested in considering the supplemental authorities, it will not "assume the role of advocate." *Northington v. Jackson*, 973 F.2d 1518, 1521 (10th Cir. 1992); *see also Mitchell v. City of Moore*, 218 F.3d 1190, 1199 (10th Cir. 2000) (The Court is not obligated to comb the record in order to make any party's arguments for them.). Doing so would not only consume an inordinate amount of time, but would result in the Court abandoning its neutrality and becoming an advocate in the adversarial process. *See Mitchell*, 218 F.3d at 1199.

To give the Parties an opportunity to address the supplemental authorities, the Court will deny Plaintiffs' Renewed Motion for Class Certification without prejudice. Plaintiffs may file a revised Renewed Motion for Class Certification which addresses the supplemental authorities.

Counsel notified the Court of the supplemental authorities by mailing letters to chambers. In the future, counsel shall notify the Court by filing a notice or other appropriate paper rather than


mailing a letter to chambers.

Plaintiffs' Unopposed Motion to Exceed Page Limit for Exhibits

Because their Renewed Motion for Class Certification “relies extensively on expert reports and other industry materials which total approximately 170 pages,” Plaintiffs believe that “in the interest of completeness, it is necessary to submit the reports in their entirety.” (Motion to Exceed Page Limit at 1). Defense counsel concurs in the Motion to Exceed Page Limit for Exhibits. (*Id.* at 2). Because it is denying Plaintiffs' Renewed Motion for Class Certification, the Court will deny Plaintiff's Unopposed Motion to Exceed Page Limit for Exhibits as moot. Plaintiffs may exceed the page limit by approximately 170 pages, as described in their Motion to Exceed Page Limits, when they file their revised Renewed Motion for Class Certification.

IT IS SO ORDERED.

Dated this 30th day of March, 2009.



MARTHA VALQUEZ
CHIEF UNITED STATES DISTRICT JUDGE

Attorneys for Plaintiffs:

Gerard V. Mantese
Mark Rossman
1361 East Big Beaver Road
Troy, MI 48083

William S. Ferguson
1720 Louisiana Blvd. NE, #100
Albuquerque, NM 87110

Attorney for Defendant Altria Group, Inc.:

Richard E. Olson
P.O. Box 10
Roswell, NM 88202-0010

Attorneys for Defendant Phillip Morris, USA:

Andrew G. Schultz
P.O. Box 1888
Albuquerque, NM 87103-1888

Gregory P. Stone
Martin D. Bern
Daniel P. Collins
255 South Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560